

actual words of Gour are "the word entrusted is used in its legal and not in its popular or figurative sense", so far quoting from an Indian case *Ghanasham Das*, 108 I. C. (S) the report of which is not available. Gour then adds in his own words "It means that it implies a creation of trust, actual or resultant, as is clear from the illustrations appended to this section".

Examination of the illustrations reveals the fact that not a single one of them is a trust properly so called. By trust I mean that special form of obligation that could only be enforced in Courts of Equity. I think that in none of the illustrations would the injured party have been restricted to a Court of Equity in enforcing his demands. Two of the illustrations are ordinary common law bailments. I think on a proper interpretation of the section any bailment comes within its scope and the relation of bailor and bailee is one of common law, not of equity. The old writers were wont to define bailment as a trust or confidence. Even Hailsham Vol. I p. 724 gives a definition which uses the word "trust" but clearly not in its technical sense. In the case in the Malayan Law Journal the learned Judge went on to say.

"In my opinion, a loan of jewellery to another does not create any legal trust under the meaning of section 405 of the Penal Code; even if (as alleged in the present case) a promise to return the same in a week's time was given.

"In law the position of the parties is that of bailor and bailee. In the circumstances of this case, as told by the complainant, it was a gratuitous loan or 'commodatum'; that is a bailment where a chattel is lent by its owner to the bailee for the express purpose of conferring a benefit upon the latter, without any corresponding advantage to the owner.

"How then, can it be suggested that any trust was created in favour of the complainant, or for her benefit? Clearly, if there were no trust actual or constructive, there can be no breach of trust, whatever other offence the appellant may have committed".

The present case is the same as the one reported except that it concerns the loss of a bicycle.

I have previously said that in my opinion the wording of the section is wide enough to include bailments and I see no reason to exclude that class which Lord Holt following the terminology of Roman Law called *commodatum*. It is true that the bailment is for the benefit of the bailee but the bailor retains many rights, indeed all rights except actual possession during the continuance of the bailment. I do not follow this decision and the appeal must be dismissed.

Appeal dismissed.

[On this point see also *R. v. Lee Siong Kiat* (1935) IV M.L.J. 53 per Terrell, J. at p. 56 *R. v. Tan Ah Seng* (1935) IV M.L.J. 273 and *R. v. Salim* (1938) VII M.L.J. 210.—Editor, M.L.J.]

[APPELLATE CIVIL JURISDICTION]

MURRAY-AYNSLEY, J.

May 22, 1939.

ESTATE & TRUST AGENCIES (1927) LTD.

vs.

COLLECTOR OF LAND REVENUE, SITIAWAN.

[PERAK CIVIL APPEAL No. 7 of 1939]

Land Code (Cap. 138), Ss. 10, 47—death of owner of land—legal personal representative, a foreign corporation—failure to comply with Part IX of Companies Enactment—transmission of interest.

A foreign corporation, having been constituted legal personal representative of a deceased person, sought to be registered as proprietor of the deceased's lands. Registration was refused on the ground that the company did not fulfil the conditions under the British and Foreign Companies Enactment or Part IX of the Companies Enactment.

Held, that as there was nothing to prevent the Company from being granted letters of administration, which had been done in this case, it was qualified to receive alienations of State land and also to receive transfers as representative where it would not be so qualified in its own right.

APPEAL from the decision of Collector of Land Revenue.

B. K. Das for the Petitioners, Estate & Trust Agencies (1927) Limited:—

Collector refused registration because Petitioners had not complied with Section 293 of the Companies Enactment (Cap. 58) and therefore did not come within the provisions of Section 10 (c) Land Code. He also relied on Section 47 Land Code.

Petitioners have not "a place of business" in Federated Malay States. Section 293 does not apply. As to place of business, see *Grant v. Anderson*, (1892) 1 Q.B. 108, *Lord Advocate v. Huron & Erie Loan and Savings Co.*, (1911) S. C. 612—A short note of this case appears in English and Empire Digest Volume 10 p. 1198 Footnote (m).

A foreign corporation, having its principal place of business outside Federated Malay States, can obtain here resealing of a foreign grant. *In Re McLaughlin*, (1922) P. 235.

Section 10 Land Code deals with alienation of State Land and not with land already alienated. Section 47 limits the right to sell, lease or charge—does not apply to transmission.

If deceased had applied for alienation of State Land but died before alienation petitioners could have received a grant from the State as representatives Section 10 (e) Land Code.

Lands vested in petitioners by virtue of Letters of Administration. Section 4 Probate and Administra-

tion Enactment and Section 54 Land Code. Collector is asked to give effect to the vesting by registering transmission.

The Collector of Land Revenue, Sitiawan, was unrepresented.

Murray-Aynsley, J.—In this case the Collector of Land Revenue, Sitiawan, refused to register the Petitioners who are a company incorporated in the Straits Settlements under the name of the Estate and Trust Agencies (1927) Ltd.

The Petitioners were granted Letters of Administration in the Straits Settlements of the estate of Lim Hooi Hong which letters of administration were resealed in the Federated Malay States.

Among the assets of the deceased were three pieces of land which have given rise to the present proceedings. The petitioners in the normal course of administration desired to be registered as proprietors of such lands. The Collector of Land Revenue refused.

The reason for this appeared to be that the Petitioners have not fulfilled the conditions under the British and Foreign Companies Enactment* or Part IX of the Companies Enactment which would bring them within Section 10 (c) of the Land Code. But it appears to me that the Collector of Land Revenue overlooked (e) of the same section.

As there is nothing to prevent the Petitioners from being granted Letters of Administration, which has been done in this case, they are qualified to receive alienations of State land and also to receive transfers etc. under Section 47 as representatives where they would not be so qualified in their own right.

Further I think Section 47 only refers to transmissions *inter vivos* and not to transmissions *mortis causa*. Person is defined in the Interpretation Enactment.

For these reasons I consider that the Petitioners are entitled to be registered and I order accordingly.

Unfortunately no one appeared in support of the decision of the Collector of Land Revenue and I had to deal with the matter *ex parte*.

Order accordingly.

*[The British and Foreign Companies Enactment, 1912, was repealed by Enactment No. 40 of 1932. Its provisions were re-enacted and appear in Part IX of the Companies Enactment (Cap. 58)—Editor, M.L.J.]

[APPELLATE CIVIL JURISDICTION]

McELWAIN, C.J. (S.S.), GORDON-SMITH, Ag. J.A.
AND CUSSEN, J.

July 8, 1939.

WAI SENG LENG v. CHAIT SINGH.

[PAHANG CIVIL APPEAL No. 1 of 1939]

Civil Procedure Code (Cap. 7) Ss. 275A, 298, 299—appointment of receiver by way of equitable execution—claim for relief by person affected by appointment—procedure.

Where an order has been obtained under Section 275A of the Civil Procedure Code appointing a receiver by way of equitable execution to receive the rent of immovable property belonging to a judgment debtor, the procedure to be adopted by the person in possession of the property whose rights have been interfered with by the appointment is laid down in Sections 298 and 299 of the Code.

CIVIL APPEAL.

Ramani for Appellant:—

The point for decision is one of procedure and falls within a small compass. The question is when an order had been obtained under Section 275(A) of the Civil P.C. what is the procedure to be adopted by any person in possession of property whose rights have been interfered with by the appointment of a Receiver. It was conceded that the practice in England would be to apply by Notice of Motion in the proceedings in which the Receiver was appointed for appropriate reliefs. That is what we did in this case. But it was contended that having regard to Sections 298 and 299 of our Code such a procedure was not competent in these Courts. The latter Sections refer in terms to property "attached in execution". We submit "attachment" and "execution" are terms of art. The property here has not been "attached" in "execution" Section 275(A) refers to "Equitable execution" and is word for word the same as Eng. o.50, R.15(A). It has been decided in England that Equitable Execution is a mere metaphor and not "execution" at all. See: *In re Shephard*, 43 Ch. D. 131. *Morgan v. Hart*, (1914), 2 K.B. 188. Annual Practice (1939) page 914, and the cases cited therein.

No argument can be founded on the fact that the Section occurs in the Chapter on "Execution". So do the provisions as to Judgment-Debtor Summonses which are not execution.

Hastings for Respondent:—

The Indian Cases on the subject of the appointment of Receivers are not applicable.

Such Receivers were appointed under the section which is equivalent to our section 500 of the Civil Procedure Code.